

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

EVERGREEN FS, INC.,)
 Petitioner,)
 v.) PCB _____
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting Clerk Bill Ingersoll
 Illinois Pollution Control Board Illinois Environmental Protection Agency
 100 West Randolph Street 1021 North Grand Avenue East
 State of Illinois Building, Suite 11-500 P.O. Box 19276
 Chicago, IL 60601 Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 23rd day of February, 2011

Respectfully submitted,
EVERGREEN FS, INC., Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323
Telephone: 217/528-2517
Facsimile: 217/528-2553

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EVERGREEN FS, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, Evergreen FS, Inc. ("Evergreen"), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals the LUST decision issued on January 20, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency refused to pay the approved amount, and in support thereof states as follows:

1. Evergreen is the owner or operator of a service station located in Dwight, Livingston County, Illinois, and assigned LPC#1050255113.
2. In 2007, a release was reported to the Illinois Emergency Management Agency from one or more underground storage tanks at the site and assigned Incident Number 20070479.
3. The Office of the State Fire Marshall determined that all of the tanks had been registered and a \$10,000 deductible would apply.
4. There has been substantial remediation activities conducted on the property pursuant to approved plans and budgets with over \$100,000 in payments from the LUST Fund.

5. On November 10, 2010, Evergreen submitted its application for payment for site investigation activities performed on the site, in the amount of \$26,500.40.

6. On January 20, 2011, the Agency refused to pay the requested amount and instead determined that the payment should be reduced by fifty-percent because “[t]he release for lust incident number 910580 was deemed ineligible.” A true and correct copy of the Agency decision letter is attached hereto as Exhibit A.

7. This appeal is filed thirty-four days from the date on which the Agency sent out the letter.

8. The Agency’s decision is wrong. There has been no determination that the release for Lust Incident number 910580 was deemed ineligible, nor is there any basis in fact or law to deem that prior incident ineligible. In addition, the Agency is either required by its own assurances to the Board in rulemaking to review only the materials submitted with the application or required to give notice of its contrary intentions and provide a pre-denial opportunity to respond. Wells Mfg. Co. v. EPA, 195 Ill. App. 3d 593, 598 (1st Dist. 1990). Furthermore, the Agency is required by 415 ILCS 5/57.7(c)(4)(D) to provide a detailed explanation of the factual and legal basis of its determination, including any additional information it needs, and having failed to do so, the application for payment should be deemed approved. Finally, the Agency should be denied by res judicata and collateral estoppel from raising this issue for the first time after numerous contrary determinations in this clean-up.

WHEREFORE, Petitioner, Evergreen, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the

Agency to approve the application for payment in full, (e) the Board award payment of attorney's fees; and (f) the Board grant Evergreen such other and further relief as it deems meet and just.

EVERGREEN FS, INC.,
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
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THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

JAN 20 2011

CERTIFIED MAIL #

7009 2820 0001 7493 4132

Evergreen FS, Inc.
Attn: Environmental Management, Inc.
1154 North Bradfordton Road
Springfield, IL 62711

Re: LPC #1050255113 -- Livingston County
Dwight / Dwight Fuel 24
808 North Union Street
Incident-Claim No.: 20070479 -- 59466
Queue Date: November 12, 2010
Leaking UST Fiscal File

Dear Mr. Eichelberger:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated November 10, 2010 and was received by the Illinois EPA on November 12, 2010. The application for payment covers the period from January 15, 2010 to November 1, 2010. The amount requested is \$26,500.40.

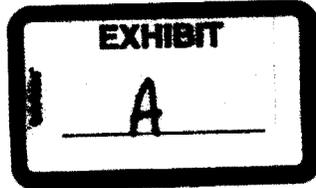
On November 12, 2010, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$13,250.20 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$10,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760
Elgin • 593 S. State, Elgin, IL 60123 • (847) 608-3131
Revenue of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-3120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 3413 N. University St., Peoria, IL 61614 • (309) 693-3463
Champaign • 2123 S. First St., Champaign, IL 61820 • (217) 278-3800
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

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accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS:CSE

ATTACHMENT

c: Leaking UST Claims Unit
Cathy Elston

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

Attachment A
Accounting Deductions

Re: LPC #1050255113 -- Livingston County
Dwight / Dwight Fuel 24
808 North Union Street
Incident-Claim No.: 20070479 -- 59466
Queue Date: November 12, 2010
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$13,250.20, deduction for costs that require a 50% apportionment of costs pursuant to 35 Ill. Adm. Code 734.640. Pursuant to Section 57.8(m) of the Act, the Illinois EPA may apportion payment of costs for plans submitted under Section 57.7 of the Act if:
 - a. The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and
 - b. The owner or operator failed to justify all costs attributable to each underground storage tank at the site.

The release for last incident number 910580 was deemed ineligible.

csc